Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Cricket License Company, LLC El Al., Leap Wireless International, Inc. and AT&T Inc. for Consent to Transfer Control of Authorizations	))))	IB Docket No. 12-343
	)	
Application of Cricket License, LLC . And Leap Licenseco Inc. for Consent To Assignment of Authorization	)))	

BROADVOX-CLEC, LLC

PETITION TO DENY

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Broadvox-CLEC, LLC ("Broadvox"), by its attorneys and pursuant to 47 C.F.R. § 1.939 and the Federal Communications Commission ("Commission" or "FCC") *Public Notice*,[1] hereby files this Petition to Deny the acquisition of Leap Wireless International, Inc. ("Leap") by AT&T Corp. ("Leap Transaction").

SUMMARY

The Commission should deny AT&T's effort through the Leap Transaction to expand its reach deeper into the prepaid wireless market in light of AT&T's ongoing efforts through its long distance affiliates to disrupt the prepaid calling card market, including routine resort to self-help nonpayment, its failure to file good faith disputes, and its brazen flouting of the

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[1] AT&T Corp. and Leap (collectively, "Applicants") filed a petition with the Commission on August 1, 2013 seeking necessary federal approval for the Leap Transaction. AT&T Inc., Leap Wireless International Inc., Cricket License Company, LLC, and Leap Licenseco, Inc., Seek Consent to The Transfer Of Control of AWS-1 Licenses, PCS Licenses, And Common Carrier Fixed Point to Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License, Public Notice, DA 13-1831 (Aug. 28, 2013).

Commission's VoIP Symmetry and other rules and orders. Given AT&T's actions, the Leap Transaction would be harmful to competition and contrary to the public interest.

AT&T already earns more revenue than any other telecommunications company in the world ($127B),[2] with affiliates reaching into every major telecom market segment. AT&T represents the roll-up of four of the seven Regional Bell Operating Companies, major wireless entities, and the country's largest long distance provider, including SWBT, Pacific Bell, Ameritech, BellSouth, AT&T Wireless, Cingular Wireless, and, of course, AT&T. The expansion of AT&T into every segment of the market may not inherently be of concern to the Commission: size only matters when a carrier such as AT&T, contrary to the public interest, abuses its dominance, as in this case where AT&T is abusing its position in one market segment to give itself a competitive advantage in other market segments. AT&T takes advantage of an FCC-recognized bottleneck for the termination of long distance calls to put competitive pressure on its rival long distance carriers attempting to serve prepaid calling card providers. At the same time, AT&T is expanding deeper into the prepaid services market through the Leap Transaction and raising prices on its own prepaid calling card ("PPCC") services.

AT&T's self-help nonpayment tactics are already a matter of public record as Broadvox has filed pleadings with the Commission complaining of AT&T's self-help efforts.[3] AT&T's practice of nonpayment should be of particular concern to the Commission because AT&T withholds millions of dollars of payments to carriers: a) without filing good faith disputes as to

[2] See Top 10 Telecom Companies in the World 2013, MBASkool.com, http://www.mbaskool.com/fun-corner/top-brand-lists/7573-top-10-telecom-companies-of-the-world-2013.html?start=8 (last viewed Sept. 27, 2013).

[3] *See* Comments of Broadvox, Inc. at 2, GN Dkt. 12-353, (Jan. 28, 2013). Other parties have complained against ILEC-self help as well. *See, e.g.*, Comments of Core Communications, Inc. on NPRM & Reply Comments of Section XV of NPRM, WC Dkt. 10-90 (Apr. 18, 2011).

the amounts withheld; and b) without providing industry standard dispute details as to amounts paid and unpa*id*. Consequently, AT&T does not even pay those amounts for which it does not have good faith disputes, essentially refusing payment for duly invoiced amounts until the billing company is forced to litigate. AT&T's self-help nonpayment of Broadvox's invoices relating to prepaid calling card traffic disrupts Broadvox and AT&T's other long distance competitors, as well as those PPCC companies trying to compete for prepaid customers, and should be a significant concern to the Commission in connection with the Leap Transaction.

The Leap Transaction is harmful to competition and is not in the public interest. As such, Applicants cannot show that the Leap Transaction satisfies the Commission's transaction approval standard. The Commission should deny Applicants' Petition until AT&T ceases its efforts to take advantage of its position in the long distance market, and demonstrates that it will file good faith disputes and generally abide by the Commission's rules. In the event the Commission approves the Leap Transaction, it should not do so without conditions requiring AT&T: to refrain from self-help nonpayment on undisputed amounts; to report all material disputes to the Commission; and to abide by the Commission's rules. Without such conditions, AT&T, by continuing to expand its empire through the Leap Transaction, will continue to abuse bottleneck arrangements in the long distance market to pin down Broadvox and other long distance competitors and to gain an unfair competitive advantage in marketing to prepaid wireless and prepaid calling card customers.

DISCUSSION

I. THE LEAP TRANSACTION

AT&T and Leap filed for approval of the Leap Transaction at the Commission on August 1, 2013. On August 1, 2013, AT&T and Leap also filed their Description of Transaction, Public

Interest Showing, and Related Demonstrations ("Transaction Description").[4] As indicated in the filings, AT&T is a leading provider of wireless, Wi-Fi, high-speed Internet, local and long distance voice, mobile broadband, and advanced TV services. As also indicated in the filings, Leap is a wireless carrier that offers services to "prepaid/no-contract" customers "for a flat rate without requiring a fixed-term contract . . . ."[5]

Although AT&T has its own prepaid wireless service and prepaid calling card service targeted to prepaid customers, AT&T and Leap indicated that the purpose of the Leap Transaction is to improve AT&T's ability to market to prepaid customers: "Combining AT&T's nationwide network with Leap's prepaid/no-contract business will benefit consumers seeking a high-quality, competitively-priced prepaid wireless experience."[6] The Applicants also emphasize that "Leap has years of experience marketing prepaid/no-contract service," and that services "will include low-cost, value-priced products . . . ."[7]

Broadvox is a competitive local exchange carrier ("CLEC") that provides interstate and intrastate exchange access services, as well as local, long distance and enhanced services on both a retail and wholesale basis to communication service providers. Broadvox serves its own local and long distance customers, but provides service to a wide variety of customers, including prepaid calling card providers. The Leap Transaction provides AT&T increased access to customers seeking prepaid and other "low-cost, valued-priced products" at a time when AT&T is

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[4] Description of Transaction, Public Interest Showing, and Related Demonstrations, *available at* https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp;ATTACHMENTS=BPSPSFJVGGvtzK0kh5TM4DvtBxLXJF8DL2zzQZ2T0Q3PG6tcn5bv!-277869364!-2066439873?applType=search&fileKey=161037351&attachmentKey=19181741&attachmentInd=applAttach ("Transaction Description").

[5] Transaction Description at 1.

[6] Transaction Description, Executive Summary at 2.

[7] *Id.*

targeting long distance providers like Broadvox whose PPCC provider customers also serve the same customers seeking such products.

II. THE LEAP TRANSACTION FAILS TO MEET THE COMMISSION'S STANDARD OF REVIEW

The Commission's review of the transaction is governed by the Communications Act, under Sections 214(a) and 310(d). AT&T and Leap must show that the proposed transaction serves the public interest, convenience, and necessity.[8] In its transaction analysis the Commission first determines whether the proposed transaction complies with federal law or the Commission's rules.[9] The Commission then determines whether the transaction will harm the public interest by substantially frustrating or impairing the objectives or implementation of the Communications Act.[10] During its review, the Commission employs a balancing test weighing any potential public interest benefits compared to potential public interest harms.[11] AT&T and Leap bear the burden of demonstrating, by a preponderance of the evidence, whether the Leap Transaction serves the public interest.[12] If the Commission is unable to find that the Proposed Transaction serves the public interest, *for any reason*, including harm to competition, the Commission may designate the applications for hearing.[13]

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[8] 47 U.S.C. §§ 214(a), 310(d).

[9] *See Applications of AT&T Inc. and Centennial Communications Corp., Memorandum Opinion and Order*, 24 FCC Rcd. 13915, ¶ 27 (2009). (*AT&T Centennial*).

[10] *See Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444, ¶ 26 (2008).

[11] *See Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc., Memorandum Opinion and Order*, 24 FCC Rcd. 8741, ¶ 9 (2008) ("*CenturyTel/Embarq Order*"). *See also AT&T Inc. and BellSouth Corporation, Application for Transfer of Control, Memorandum Opinion and Order*, 22 FCC Rcd. 5662, ¶ 19 (2007) (*AT&T Bellsouth*).

[12] *Id.*

[13] *Id.* (emphasis added).

The Commission has previously found that a transaction could increase the incentives and opportunities to engage in anticompetitive activity by allowing a merged entity to export practices that impede competition from one service to another.[14] For example, in the CenturyTel/Embarq merger, in order to ensure that the increased size of the merged entity did not result in anticompetitive behavior, the Commission included enforceable conditions to the merger.[15] The Proposed Transaction raises the same issues as the CenturyTel/Embarq merger, and conditions are needed to serve the public interest.

III. THE PROPOSED TRANSACTION FAILS TO SERVE THE PUBLIC INTEREST BECAUSE AT&T ENGAGES IN SELF-HELP NONPAYMENT WHILE FAILING TO FILE GOOD FAITH DISPUTES

AT&T, through its long distance affiliates, puts pressure on other long distance providers trying to serve prepaid calling card and other customers by failing to pay invoices without filing timely or good faith disputes. The standard industry practice is to require carriers to pay on all undisputed charges, and file detailed disputes relating to all amounts unpa*id.* AT&T, as it has for years, ignores standard payment and dispute practices. It pays what it wants, when it wants, for whatever reason it wants, and it does not provide any detail connecting its minimal payments to disputes.

In Broadvox's most recent complaint against AT&T, Broadvox has invoiced AT&T, over the course of a year and eight months, $3.48M in access charges through August 2013. AT&T has paid approximately $428K, leaving 88% of Broadvox's invoices unpa*id.* AT&T has never filed a detailed dispute identifying which charges, by invoice, rate element, or otherwise, it is paying and which it is not. Broadvox is left to guess as to what elements the late-paid $428K is

[14] *See, e.g., CenturyTel/Embarq Order*, ¶ 33.

[15] *Id.*

attributable. AT&T will make broad statements, such as that their disputes relate to prepaid calling card traffic, but these are never tied back in any meaningful way to Broadvox's invoices.[16] Moreover, the amounts disputed—88% of the dollars invoiced—is tantamount to saying we're just not going to pay you in any meaningful way for calls to prepaid calling card providers.

A detailed, industry standard dispute would state, for example, that a carrier is willing to pay for certain rate elements, but not for others. AT&T has at times indicated that it will not pay end office switching charges because it takes the position that end office switching does not apply for calls to prepaid calling card providers. That is an issue that the parties are currently litigating. But, AT&T has also indicated that, not only will it not pay end office rate elements, but that it won't pay Broadvox ***any*** of its duly invoiced rate elements—neither tandem switching, nor tandem transport, nor other elements—for calls to prepaid calling card providers. There is no dispute that the traffic in question was AT&T's traffic, nor that access services were provided by Broadvox. Yet AT&T makes untimely, *de minimis* payments, without industry standard disputes.

This Broadvox example is not an isolated example, but rather AT&T's *modus operandi*. A number of other carriers, including Level 3 and Bandwidth.com, have recently complained to the Commission about significant nonpayment issues with AT&T. Other carriers have filed federal lawsuits against AT&T for similar nonpayment issues in the past.[17] In addition, a

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[16] By way of background, Broadvox carries 1+ and 8YY dialed calls to its prepaid calling card customers. The calls that are the subject of the AT&T's disputes are not locally dialed calls.

[17] *Pac-West Telecom, Inc. v. AT&T Communications of California, Inc. and AT&T Corp.*, 1:10-cv-0968 OWW GSA (E.D. Cal. 2010) (complaint relating to AT&T's refusal to pay Pac-West invoices for prepaid calling card services); *Advamtel LLC v. AT&T Corp.*, 105 F.Supp.2d 507, 513–15 (E.D.Va.2000) (complaint by 16 competitive local exchange carriers against AT&T for its failure to pay access charges).

number of carriers filed comments and *ex partes* in the *Connect America Fund* proceeding indicating that AT&T and other carriers repeatedly engaged in self-help nonpayment.[18] In response to those filings, the Commission indicated that it does not condone nonpayment outside of legitimate tariff disputes,[19] and yet despite Commission warnings, AT&T continues to withhold significant payments without industry standard disputes.

The Commission has in the past recognized the importance of the continued availability of prepaid calling cards, including for the use of military personnel and their families:

> In the *Calling Card Order* and *NPRM*, the Commission noted that military personnel rely heavily on prepaid calling cards and asked what steps, if any, it should take to ensure that such cards remain reasonably priced. Calling Card Order and NPRM, 20 FCC Rcd. at 4841, ¶ 43. The Department of Defense (DoD) filed comments in this proceeding explaining that any increase in the cost of calls would negatively affect soldiers and their families. See DoD NPRM Comments at 1. In its Emergency Petition, AT&T suggests that we exempt prepaid calling cards "sold by, to, or on behalf of military exchanges or the Department of Defense" from USF contribution requirements. AT&T Emergency Petition at 7.[20]

In light of the importance of prepaid calling cards, the Commission should not permit AT&T to continue to harass companies serving prepaid calling card providers through bad faith disputes.

Although Broadvox is requesting that the Commission deny or condition the Leap Transaction in response to this Petition to put an end to AT&T's pattern and practice of bad faith nonpayment, Broadvox has also filed a complaint in federal court in order to enforce its tariffs and collect over $3M in amounts past due. As such, this Petition is not itself an effort to collect AT&T's past due payments. But the fact that smaller carriers like Broadvox—which try to

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[18] *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 700 (2011) ("*Connect America Fund*").

[19] *Id.*

[20] *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290, ¶ 23 (2006) ("*Seventh Report and Order*").

compete with AT&T in the long distance market, and provide access services to AT&T's competitors in the market for prepaid services—are forced to litigate at every turn to collect routine access payments is an endemic problem and one that will be exacerbated by the Commission's approval of this transaction.

IV. AT&T IS TAKING ADVANTAGE OF THE BOTTLENECK FOR TERMINATION OF LONG DISTANCE CALLS

Broadvox is required to terminate AT&T long distance calls to its end users originating from AT&T and is precluded by Commission rules from blocking those calls.[21] This puts Broadvox in a bind when AT&T refuses to make any significant payments for the calls that Broadvox must continue to terminate. By simply engaging in self-help, AT&T can continue for years to terminate calls to Broadvox and other carriers while Broadvox pursues its legal recourse, expending significant resources, through Commission enforcement or the courts.

In the past, AT&T has recognized that there is a bottleneck monopoly when interexchange traffic must be terminated through a CLEC in order to reach a particular end user. AT&T argued in the *Seventh Access Charge Reform Report and Order* that this bottleneck created a need to regulate CLEC access charge rates, and the Commission agreed that a bottleneck existed: "Sprint and AT&T persuasively characterize both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user."[22] The Commission relied on this bottleneck to find that it was necessary for the Commission to establish structured rates or benchmarks for CLEC access charges,

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[21] *Developing An Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd. 1351, ¶ 9 (2012).

[22] Seventh Report and Order, ¶ 30.

ensuring that CLEC access rates were set equal to or lower than ILEC rates.[23] Broadvox has complied with the Commission's rulings and has consistently filed tariffed rates at or below the benchmark. As such, Broadvox's rates have the Commission's "conclusive presumption of reasonableness."[24]

AT&T has now successfully reversed the impact of the bottleneck monopoly. Just as the Commission expressed concern when rates flowing through the bottleneck were previously too high, AT&T has figured out how to turn the bottleneck to its advantage, pouring its traffic through to the CLEC, which cannot block the traffic, but refusing close to 90% of the invoiced payments absent protracted litigation.[25] AT&T's customers make high volumes of prepaid calling card and other calls routed through Broadvox to prepaid calling card customers, and yet Broadvox gets paid next to nothing for the services indisputably rendered. The Commission should be just as concerned about AT&T's abuse of the bottleneck through unduly low rates as it was in the *Seventh Report and Order* when some CLECs had set rates at unreasonably high levels: "such cost shifting is inconsistent with the competitive market that we seek to encourage for access service."[26]

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[23] *Id.*, ¶ 34.

[24] *Seventh Report and Order*, ¶ 44.

[25] The Commission has repeatedly characterized such self-help as illegal and contrary to the Commission's rules. *See* Supra footnote 17; but see, *All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom, Complainants*, 26 FCC Rcd. 723 (2011).

[26] *Seventh Report and Order*, ¶ 33.

V. THE COMMISSION SHOULD DENY THE LEAP TRANSACTION BECAUSE IT PERMITS AT&T TO EXTEND ITS REACH DEEPER INTO THE PREPAID SERVICES MARKET WHILE DISRUPTING ITS PREPAID SERVICES RIVALS AND THE CARRIERS THAT SERVE THEM

A. The Commission's Standard for Review of Anticompetitive Merger Effects is a Broad One

The Commission has established a broad standard of review for mergers, reviewing the effects of mergers on the public interest, including the impact on competition, in a manner that extends beyond, for example, the antitrust scrutiny of the Department of Justice:

> The Commission . . . is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players. In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition. We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create or enhance market power, increase barriers to entry by potential competitors, and/or create opportunities to disadvantage rivals in anticompetitive ways.[27]

The Commission's review is not a limited one: "The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market."[28]

The Commission's analysis is not limited to horizontal merger effects, and the Commission is particularly interested in whether a merger will enhance the merged entities ability to injure competitors:

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[27] *AT&T BellSouth*, ¶ 21 (citations omitted).

[28] *Embarq CenturyLink*, ¶ 11 (citations omitted).

> In addition, because both AT&T and BellSouth provide critical inputs, particularly special access services, to various communications markets, we need to consider the potential vertical effects of the merger – specifically, whether the merged entity will have an increased incentive or ability to injure competitors by raising the cost of, or discriminating in the provision of, inputs sold to competitors.[29]

AT&T, in its Transaction Description, focuses almost exclusively on horizontal effects of the transaction,[30] but neglects to consider the damaging behavior that AT&T perpetrates by virtue of its presence into multiple market segments.

B. Through the Leap Transaction, AT&T Will Increase Its Ability to Put Competitive Pressure on Prepaid Calling Card Service Providers

AT&T, because of its deep reach into so many different geographic and product markets, is unique in its ability to disrupt competitors and therefore requires special scrutiny. As a threshold matter, AT&T is already serving wireless prepaid customers through its GoPhone Service, as indicated in the Transaction Description.[31] But AT&T also serves the prepaid calling card market through its own AT&T Prepaid Minutes prepaid calling card service.[32] Upon information and belief, AT&T also charges access for calls to its prepaid calling card platform. In the end, AT&T does not object in principle to prepaid calling card services; it only seems to object when other companies offer the service.

Through the Leap Transaction, AT&T is increasing its penetration into the market for prepaid services: "Leap is a provider of prepaid/no-contract service offerings that compete

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[29] *AT&T BellSouth*, ¶ 23.

[30] *See, e.g.*, Transaction Description, at 21, et seq.

[31] *Id.*, at 25.

[32] AT&T Prepaid Calling Card, AT&T.com http://attprepaidcard.amssupport.net/?id=16&site=2 (last viewed on Sept. 27, 2013).

primarily with those from T-Mobile/MetroPCS, Sprint, and TracFone."[33] The Applicants claim that the purpose of the Leap Transaction is to "bring consumers a compelling, nationwide, facilities-based alternative for a full range of prepaid/no-contract services."[34]

There is no question that prepaid wireless services compete directly with prepaid calling card services. One need look no further than the annual report of IDT, one of the leading independent prepaid calling card providers in the country:

> Telecom Competition
>
> Over the past few years, we have experienced a continued shift in demand industry-wide, away from traditional calling cards and into wireless products and IP-based products, which, among other things, contributes to the gradual erosion of our pricing power. The continued growth of these wireless and IP-based services has adversely affected the sales of our traditional disposable prepaid calling card products as customers migrate from using cards to using these alternative services. We expect pricing of wireless and IP-based services to continue to decrease, which may result in increased substitution and increased pricing pressure on our prepaid calling card products' sales and margins.[35]

Given the fact that AT&T will, by acquiring Leap, will increase competitive pressure on prepaid calling card providers, AT&T's targeting of prepaid calling card traffic through its long distance affiliate should be of grave concern to the Commission.

C. AT&T's Actions are Disruptive to Its Long Distance Competitors and Its Prepaid Calling Card Competitors, and the Leap Transaction Will Increase AT&T's Ability to Disrupt These Competitors

Through its bad faith disputes and arbitrary nonpayment, AT&T manages to put competitive pressure on its competitors in multiple markets. Broadvox is acutely aware of the competitive pressure it faces in the long distance market, merely because it routes access traffic

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[33] Transaction Description at 25.

[34] *Id.*, Executive Summary at i.

[35] IDT CORP FORM 10-K (Annual Report), filed 10/15/12 for the Period Ending 07/31/12.

to prepaid calling card customers. Broadvox has invoiced AT&T, over the course of a year and eight months, $3.48M in access charges. AT&T has paid approximately $428K, leaving 88% of Broadvox's invoices unpaid. Needless to say, it is exceedingly difficult for Broadvox to carry this receivable of over $3M and growing, while continuing to carry AT&T's traffic, as it is required by FCC rules to do. AT&T is targeting its disruption in this case at long distance carriers that serve prepaid calling card customers, as it has in the past.

Prepaid calling card providers themselves are also placed at a competitive disadvantage by AT&T's self-help nonpayment because they are limited in terms of the carriers that are willing to provide access services for which they do not receive payment, and because they may be forced to routinely switch long distance providers when nonpayment makes it difficult for long distance carriers to continue to serve them as a customer. Very few long distance carriers can afford to serve a customer when 90% of its access invoices remain unpaid, and can only be collected after extensive and expensive litigation.

The Commission should be concerned that AT&T is putting competitive pressure on prepaid calling card providers through bad faith disputes as it is poised to acquire Leap because Leap itself recently announced its own prepaid, low-cost international calling plan to Mexico. In a release entitled, Cricket Expands International Calling Features with Unlimited Calls to Mobile Phones in Mexico,[36] Leap announced that it would provide unlimited long distance calling to Mexico. AT&T's effort to disrupt the competitive offerings of prepaid calling card providers through bad faith disputes relating to their traffic represents a basis for the Commission to deny approval of the Leap Transaction.

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[36]Cricket Expands International Calling Features with Unlimited Calls to Mobile Phones in Mexico, http://newsroom.leapwireless.com/Press-Releases/Cricket-Expands-International-Calling-Features-with-Unlimited-Calls-to-Mobile-Phones-in-Mexico-672.aspx (website last viewed on Sept. 27, 2013).

D. The Leap Transaction is Particularly Disruptive Because Most of AT&T's Traffic to Broadvox Is Initiated By Wireless Customers

The Leap Transaction is contrary to the public interest and will impede competition because a study conducted by Broadvox indicates that 89% of long distance traffic AT&T is sending to Broadvox emanates from wireless customers. Broadvox analyzed five months of AT&T long distance traffic delivered by AT&T to Broadvox from March 2012 through July 2012, and found that 89% of the traffic in question originated from wireless handsets. *See* Exhibit A, attached hereto. Although Broadvox cannot be certain, to the extent that some of that traffic is destined for prepaid calling card providers, it seems likely wireless customers on so-called "all you can eat" wireless plans are using those plans to make international calls, calls that have been PIC'ed to AT&T long distance service.

If the Commission permits AT&T, through the Leap Transaction, to increase the number of such "all-you-can-eat" customers on AT&T's network,[37] AT&T will actually be increasing the flow of traffic originated by its own wireless customers to Broadvox, while continuing its practice of failing to file industry standard disputes, failing to identify what it is paying and not paying for, and failing to make payment on almost 90% of Broadvox's invoiced charges. This will exacerbate what is already an untenable situation for Broadvox and, accordingly, the Commission should deny the Leap Transaction at this time.

[37] Leap has been offering unlimited "all-you-can-eat" long distance calling plans since 2004. Leap Announces the Launch of Cricket Unlimited ™ - First Ever Complete Package of Unlimited Anytime Local, U.S. Long Distance, and Text Messaging Wireless Services, http://www.prnewswire.com/news-releases/leap-announces-the-launch-of-cricket-unlimitedtm---the-first-ever-complete-package-of-unlimited-anytime-local-us-long-distance-and-text-messaging-wireless-services-72084617.html (Mar. 16, 2004) (last viewed Sept. 27, 2013).

E. AT&T Has Also Failed to Comply With the Commission's VoIP Symmetry Rule

Finally, the Commission should take note of AT&T's obstinate failure to abide by the VoIP Symmetry Rule established in the *Connect America Fund Order*. The *Connect America Fund Order* included provisions that many parties considered objectionable. Many CLECs, for example, objected to the gradual elimination of intercarrier compensation over time, as well as a variety of other provision of the Order. But given that the Order is effective upon appeal, CLECs have complied with that transition and other provisions, pending a decision of the Tenth Circuit on the legality of the Commission's decision. AT&T only found one provision sufficiently objectionable to appeal it to the Tenth Circuit, the VoIP Symmetry Rule. But instead of complying with that rule in the meantime, AT&T has found every means possible to skirt and frustrate the Commission's intention in establishing that rule. The Commission should not issue an order approving the Leap Transaction until AT&T commits to complying with the Commission's previous orders, and particularly the VoIP Symmetry Rule provisions of the *Connect America Fund Order*.

As part of the same $3M dispute referenced above, AT&T has refused to comply with the VoIP Symmetry Rule and denied Broadvox access charge payments associated with functions performed by Broadvox and its VoIP provider partners. The Commission's rules "permit a LEC to charge the relevant intercarrier compensation functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture."[38] Instead of complying with the VoIP Symmetry Rule, AT&T has used it as an excuse to invent new excuses for nonpayment of its competitors' access invoices. Given that AT&T's efforts to evade the VoIP Symmetry Rule

[38] *Connect America Fund*, ¶ 970.

are well-documented at the Commission, Broadvox does not intend to recapitulate the arguments against AT&T's failure to comply with that Rule. Given that AT&T has taken the position that prepaid calling card traffic is also VoIP traffic and non-reimbursable subject to the VoIP Symmetry Rule, the Commission should, for the same reasons detailed above, withhold approval of the Leap Transaction until such time as AT&T commits to compliance with the letter and the spirit of the VoIP Symmetry Rule.

VII. IF THE COMMISSION DOES NOT DENY THE LEAP TRANSACTION, IT SHOULD IMPOSE CONDITIONS TO ENSURE THAT THE TRANSACTION IS IN THE PUBLIC INTEREST

The Commission has previously asserted its authority to impose conditions on a transaction to ensure that the public interest is served by the transaction:

> The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction. Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger will, overall, serve the public interest. Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (i.e., transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.[39]

To ensure that the Leap Transaction is in the public interest, the Commission should impose the following conditions:

1) AT&T shall be required to file a monthly report with the Commission, until further notice by the Commission, identifying all access charge disputes that exceed an outstanding balance of $100,000 on a carrier-by-carrier basis. The report should include detail concerning all amounts paid and unpaid, with detailed explanation of all disputes tied directly to the amounts paid and unpaid.

[39] *BellSouth/AT&T Order*, ¶ 22.

2) Prior to approval of the Leap Transaction, AT&T shall be required to file a list of all such disputes currently pending, and associated dispute detail as described above.

3) Prior to approval of the Leap Transaction, AT&T shall be required to file all settlements, confidential or otherwise, relating to access charges, including all prepaid calling card disputes, from January 1, 2008 to the present. The Commission shall make available such settlements to any requesting provider.

4) AT&T shall offer any such settlement rates, terms, and conditions to any requesting carrier on a nondiscriminatory basis.

5) AT&T shall submit to FCC mediation on any access charge dispute, waiving arguments relating to election of remedies pursuant to Section 207. 47 U.S.C. § 207.

6) AT&T shall be required to comply with the VoIP Symmetry Rule, and shall submit any and all disputes relating to the VoIP Symmetry Rule to Commission mediation pursuant to Condition 4 immediately above.

7) AT&T shall commit to file all access charge disputes with the billing company on a timely basis, to file only good faith disputes, and to make payment on all access charges not duly disputed.

8) Prior to approval of the Leap Transaction, AT&T should be required to provide a detailed report to the Commission on its access payment policies, including steps being taken to end its ongoing practice of access self-help through bad faith disputes.

CONCLUSION

In light of AT&T's bad faith access charge disputes and nonpayment in connection with prepaid calling card customers, approval of the Leap Transaction would perpetuate and exacerbate anticompetitive practices by AT&T. As such, approval of the Leap Transaction while these practices are ongoing is not in the public interest. If the Commission does approve the Leap Transaction, it should only do with Broadvox's proposed conditions in order to ensure the transaction is in the public interest.

Respectfully submitted,

/s/ James C. Falvey

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September 27, 2013

Exhibit A

Wireless Percentages of AT&T's Long Distance Traffic

Sent to Broadvox for Termination

Invoice	Non-Wireless MOUs	Wireless MOUS	Grand Total	Percent Wireless
March 2012	329,446.70	2,139,361.97	2,468,808.67	87%
April 2012	346,406.37	2,461,238.65	2,807,645.01	88%
May 2012	422,776.26	4,058,024.00	4,480,800.26	91%
June 2012	397,612.83	3,667,016.02	4,064,628.85	90%
July 2012	341,913.39	3,130,857.67	3,472,771.06	90%
Grand Total	**1,838,155.55**	**15,456,498.31**	**17,294,653.85**	**89%**

CERTIFICATE OF SERVICE

I, Justin L. Faulb, hereby certify that on this 27th day of September 2013, I caused true and correct copies of the foregoing Petition to Deny to be served by electronic mail to the following:

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